

AMENDED IN SENATE MAY 20, 2010
AMENDED IN ASSEMBLY JANUARY 4, 2010
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 633

Introduced by Assembly Member Ammiano

February 25, 2009

An act to amend Section 2636 of the Penal Code, relating to the Department of Corrections and Rehabilitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 633, as amended, Ammiano. Department of Corrections and Rehabilitation: inmates and wards: classification.

Existing law requires the Department of Corrections and Rehabilitation to classify inmates and wards in order to prevent inmate and ward sexual violence and to promote inmate and ward safety, as specified. Existing law also requires the department to consider specified risk factors when classifying ~~the inmate~~ *and housing inmates*.

~~This bill would add the sexual orientation and gender identity of the inmate or ward, as specified, to the list of risk factors to be considered, and would provide related directions to the department~~ *revise the risk factors, as specified, for assessing inmates or wards for risk of sexual victimization or risk of being sexually abusive, providing different factors based on whether the inmate or ward is being assessed for risk of sexual victimization or of sexual abusive behavior, and based on whether the inmate or ward is in a facility for male or female inmates. The bill would also provide directions to the department related to those risk factors and the placement of inmates and wards. The bill would prohibit the department from requiring an inmate or ward to disclose*

or report his or her sexual orientation or gender identity and from disciplining or punishing an inmate or ward for failing to disclose or report his or her sexual orientation or gender identity, as provided.

The bill would prohibit ~~this section~~ *the above provisions* from being construed to require or justify expansion or construction of department facilities.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that *the*
2 *National Prison Rape Elimination Commission has reported that*
3 ~~inmates and wards of the Department of Corrections and~~
4 ~~Rehabilitation may be~~ *correctional facilities are at a heightened*
5 *risk of sexual violence and abuse based on certain risk factors,*
6 *including being young, being lesbian, gay, bisexual, or transgender,*
7 ~~not having served a prior term of commitment, or having a history~~
8 ~~of mental illness.~~ *having a mental or physical disability, being*
9 *young, having a slight physical build, having a sexual orientation*
10 *other than heterosexual, being gender nonconforming, for example,*
11 *having transgender identity or an intersex condition, not having*
12 *served a prior term of commitment, having a nonviolent history,*
13 *having a history of sexual victimization, or having a prior*
14 *conviction for a sexual offense.*

15 (b) It is the intent of the Legislature in enacting this act to ensure
16 that the Department of Corrections and Rehabilitation ~~(1)~~
17 recognizes that wards or inmates may be at increased risk based
18 on these factors, and ~~(2)~~ provides vulnerable inmates or wards who
19 ~~are determined to be~~ at risk with heightened protection in
20 classification and housing decisions, without automatically
21 subjecting them to highly restrictive or isolated settings or denying
22 them access to programs and services.

23 SEC. 2. Section 2636 of the Penal Code is amended to read:

24 2636. For the purposes of this section, all references to
25 classification of wards shall take effect upon the adoption of a
26 classification system for wards developed by the Department of
27 Corrections and Rehabilitation in compliance with *Farrell v. Allen,*
28 *Alameda County Superior Court Case No. RG 03079344.*

1 The following practices shall be instituted to prevent sexual
2 violence and promote inmate and ward safety in the ~~Department~~
3 ~~of Corrections and Rehabilitation~~ *department*:

4 (a) ~~The Department of Corrections and Rehabilitation~~
5 ~~department's~~ inmate classification and housing assignment
6 procedures shall take into account risk factors that can lead to
7 inmates and wards becoming the target of sexual victimization or
8 of being sexually ~~aggressive~~ *abusive* toward others. Relevant
9 considerations include:

10 (1) ~~Age of the inmate or ward.~~

11 (2) ~~Self-reported safety concerns related to the sexual orientation~~
12 ~~and gender identity of the inmate or ward.~~

13 (3) ~~Whether the offender is a violent or nonviolent offender.~~

14 (4) ~~Whether the inmate or ward has served a prior term of~~
15 ~~commitment.~~

16 (5) ~~Whether the inmate or ward has a history of mental illness.~~

17 (1) *For assessing inmates or wards in men's or boys' facilities*
18 *or units for risk of sexual victimization: mental or physical*
19 *disability, mental illness, young age, slight physical build, first*
20 *incarceration in prison or jail, nonviolent offense history, prior*
21 *convictions for sex offenses against an adult or child, sexual*
22 *orientation of gay or bisexual, gender nonconformance, for*
23 *example, transgender identity or intersex condition, prior sexual*
24 *victimization, and the inmate's or ward's own perception of*
25 *vulnerability.*

26 (2) *For assessing inmates or wards in men's or boys' facilities*
27 *or units for risk of being sexually abusive: prior acts of sexual*
28 *abuse and prior convictions for violent offenses.*

29 (3) *For assessing inmates or wards in women's or girls'*
30 *facilities or units for risk of sexual victimization: mental or physical*
31 *disability, mental illness, prior sexual victimization, and the*
32 *inmate's or ward's own perception of vulnerability.*

33 (4) *For assessing inmates or wards in women's or girls'*
34 *facilities or units for risk of being sexually abusive: prior acts of*
35 *sexual abuse.*

36 (b) ~~The Department of Corrections and Rehabilitation~~
37 ~~department~~ shall ensure that staff members intervene when an
38 inmate or ward appears to be the target of sexual harassment or
39 intimidation.

1 (c) ~~The Department of Corrections and Rehabilitation~~
2 ~~department~~ shall not require any inmate or ward to disclose or
3 report his or her sexual orientation or gender identity at any time,
4 and a disclosure or report shall not be discredited solely because
5 it was not provided at an earlier point in time.

6 (d) ~~The Department of Corrections and Rehabilitation~~
7 ~~department~~ is prohibited from disciplining or otherwise punishing
8 an inmate or ward if the inmate or ward fails to disclose or report
9 his or her sexual orientation or gender identity during all or part
10 of his or her term of commitment.

11 (e) *In accordance with the department's classification scoring*
12 *system, the risk factors listed in subdivision (a) shall be considered*
13 *with the goal of keeping separate those inmates and wards at high*
14 *risk of being sexually victimized from those at high risk of being*
15 *sexually abusive. Inmates and wards at high risk for sexual*
16 *victimization may be placed in segregated housing only as a last*
17 *resort and then only until an alternative means of separation from*
18 *likely sexual abusers can be arranged. The department shall make*
19 *reasonable efforts to ensure that risk of sexual victimization based*
20 *on the risk factors listed in subdivision (a) does not limit access*
21 *to classification, housing, programs, education, and work*
22 *opportunities, unless it is clinically indicated. Lesbian, gay,*
23 *bisexual, transgender, or other gender-nonconforming inmates or*
24 *wards shall not be placed in particular facilities, units, or wings*
25 *solely on the basis of sexual orientation, genital status, or gender*
26 *identity.*

27 (e)

28 (f) Nothing in this section shall be construed to require or justify
29 expansion or construction of ~~Department of Corrections and~~
30 ~~Rehabilitation~~ *department* facilities.

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33 CORRECTIONS: _____

34 Text—Page 3.
35 _____